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THE CONVICT LABOR SYSTEM OF TEXAS

No function of the state is more expensive and more difficult to perform than the suppression of crime and the extinction of the criminal class. To protect itself against the criminal, society has evolved elaborate criminal codes, police forces, courts, and a whole series of jails, houses of correction and penitentiaries. But we seem little nearer to a solution of the problem now than when Moses received the law on Mount Sinai. The state is spending enormous sums to protect itself against the criminal. In an address before the recent meeting of the National Prison Association, Mr. Eugene Smith, an eminent lawyer and penologist of New York City, made the statement that the American people pay more for protection against the criminal class than they pay to the support of the national government, with its army and navy and host of employees. According to his estimate the penal machinery of the country costs us not less than \$600,000,000 annually.

Now, while the criminal class is large, and probably growing larger, it is insignificant in size when compared with the great body of our people. Charles Dudley Warner estimates that the total number of habitual criminals in the country does not exceed 80,000 or 100,000. "It is a body," says he, "that seventy millions of people ought to take care of with little difficulty. And we certainly ought to stop its increase. Those who watch the criminal reports are alarmed by the fact that an increasing number of those arrested for felonies are discharged convicts. This is an unmistakable evidence of the growth of the outlaw classes." As further evidence on this point, I might call attention to the growth of the prison population in Texas. In 1870 we had one convict in the penitentiary for every fifteen hundred and nineteen inhabitants; in 1880, one to seven hundred and sixty-nine inhabitants; in 1890, one to seven hundred and three inhabitants; and in 1900, one to seven hundred and two inhabitants. In other words, during the last thirty years the number of criminals in the penitentiary in this state has more than doubled in proportion to population.

In view of these facts, we are led to ask if we are pursuing the right policy in our dealings with the criminal. Why is it that with all this machinery of administration society is unable to rid itself of

its one enemy, the criminal, or even to make headway against him? When society pours out its wealth in such lavish abundance, when the police are constantly on the alert, when the courts are in ceaseless operation, and penal institutions are kept full to overflowing, and still the amount of crime increases, something is evidently radically wrong in our methods of dealing with the criminal.

Blackstone says that the purpose of punishment is two-fold, to reform the criminal and to deter others from the commission of similar crimes. Postponing for a time the consideration of the justice of the principle of deterrence, let it be noted here that this deterrence is intended not for the criminal himself, but for others. It follows, therefore, that the sole duty of the state to the criminal is to effect his reformation and to return him to society an honest citizen. It can be shown that, under our present system of dealing with the criminal, the very minimum of the state's efforts is directed to the reformation of the criminal. Especially is this true in the state of Texas. The penitentiaries seem to be organized primarily as money-making, or at least as money-saving, institutions. The anxiety to save a few dollars to the state has been so great that the great fundamental purpose of a penal institution has been neglected. No serious effort is made to effect the reformation of the criminal, but he is returned to society a more determined criminal than before—in the long run, the most wasteful policy that could be adopted.

Let us look for a moment at what Texas is doing for the reformation of its criminals. There are two penitentiaries and about four thousand convicts. The property of the two penitentiaries is worth considerably more than a million dollars. And yet of this vast equipment of buildings and machinery, only an insignificant amount is devoted to distinctively reformatory measures, to the mental and moral enlightenment of the convicts. Each penitentiary has a chapel or assembly hall and each has a library of about two thousand volumes. Neither has a school building, a gymnasium, a swimming-pool, or a military organization. There are no maps, charts, globes, school desks or other equipment, and no hours set apart for school work. The men are worked hard all day long at the industries, and the school work is crowded in at night and on Sunday mornings, and is entirely voluntary. At the two institutions combined not more than fifty or seventy-five men take part in the school work, and most of the work consists in teaching illiterate

men to read and write. At Huntsville the sole equipment is two tables and some crude old benches placed in the corridors of one of the cell buildings, not even a separate room having been assigned to this work. No work in manual training is given, and no attempt is made to teach men trades, in order that they may be able to earn an honest living—at least, no serious attempt is made. Of course, a large number of trades and industries are carried on within the walls, but the purpose on the part of the state is money-making and not the instruction of the criminal. In a recent letter on the subject, Chaplain S. H. Morgan, of Huntsville, says, “The state makes no particular effort to teach any trades. Convicts learn trades by simply going to work and watching and learning from each other. But they usually learn them ‘by main strength and awkwardness.’” The mercenary motive of the state in what little trade-teaching it does is further shown by the fact that only long-term men whose services at a profitable trade may be enjoyed by the state through a long series of years are given opportunity to learn trades, if they desire to do so. In a recent letter, Superintendent Searcy Baker says, “Short-time able-bodied men are generally sent to the farms. Long-time men or men with a trade are kept in the walls and put at some trade.” Now, this is the very reverse of the policy the state would adopt if its purpose were the instruction of the criminal. If the state were teaching men trades in order to prepare them to earn an honest living, then certainly short-time men, who are soon to return to society, should receive the greatest care.

At both penitentiaries, the offices of chaplain, school-teacher and librarian are united and one person at each place appointed to fill them all. The salary paid this wonderful man, on whose shoulders the state places the responsibility of the mental and moral regeneration of two thousand illiterate and dangerous characters, is \$50 per month, or \$600 annually. This is exactly the same as the salary received by the sergeant who has charge of the bloodhounds! The total amount of salaries paid by the state to superintendents, guards, keepers, and so on at the two penitentiaries is more than \$250,000 annually, of which \$1,200 is paid for moral and mental instruction. Thus it would seem that the state has almost entirely lost sight of the true purpose of a penal institution. We build tremendous institutions for the reformation of the criminal, and then we proceed to do everything, except reform the criminal.

Such are the conditions within the walls of the penitentiaries. While bad enough, they are infinitely better than conditions without. Only about thirteen hundred men are kept within the walls. The other twenty-seven hundred to three thousand are worked under three different conditions. About four hundred labor on farms owned and operated by the state. Others are worked on share farms, that is, farms owned by private parties, the state receiving one-half of the profits. Others still are leased out to railroads and farms, and the state receives from \$15 to \$20 per month as wages. The conditions on the share farms and the contract farms are substantially the same, and together they employ from 2,000 to 2,500 men.

This lease system is a discredit to any civilized community. It is hardly less brutal than the former exile system of Russia. In an address delivered in 1897 before the National Prison Association, then in session in Austin, Texas, Judge John N. Henderson, of the Court of Criminal Appeals, speaking from personal observation, declared that conditions on a convict farm are of the severest kind. The men are housed in a long plank house or shed, with a door in one end and a small iron-grated window in the other. They sleep on low two-storied plank bunks along the walls, while by the door sits the guard on watch with shotgun in hand. During the day the men are worked in squads under the eye of a mounted guard, armed with a shotgun and a leather strap, which is applied vigorously on the slightest provocation. The law requires that no whipping be done except with the written permission of the superintendent or inspector. "Yet our investigation leads us," says the recent Legislative Investigating Committee, "to believe that this law is held in contempt and as a rule no attention is paid to it." Continuing, the committee in their report say, "It is our conviction that the lease system is a disgrace to the state and ought to be abolished. As a rule the life of a convict is not as valuable in the eyes of the sergeants and guards and contractors, with a few exceptions, as that of a dog; in evidence thereof we find that the average life of a convict is seven years. Convicts are shot down upon the least provocation, and when there is absolutely no excuse for it. Convicts are worked when they are sick and disabled, and some have been compelled to work until they drop dead in their tracks, yet nothing so far as we know has ever been done to remedy this evil." Now, this is the opinion, not

of sentimentalists, but of plain practical men who had ample opportunity for investigation. In fact, the contract system is nothing more nor less than a form of human slavery. The men are often worked to the very limits of human endurance. The evidence before the committee shows that the men are frequently driven to the field on the run and are worked as long as they can see, with only a few minutes to eat their dinner, which is hauled to them in a wagon and served on the ground. Sunstrokes are frequent. Judge Henderson tells of an instance of four deaths in one squad in two days from that cause alone. The death-rate on the farms is greater than that within the walls, and Prison Physician W. E. Fowler, of Huntsville, estimates that 50 per cent of those who die within the walls are worn out and broken down on the farms and are then sent back to the prison to die. The sergeants in charge of the squads are paid regular salaries by the state, but the Investigating Committee found that in a number of cases an additional salary is paid them by the contractors. This is little short of bribery of a public official. A partial justification of the conduct of the contractor is found in the fact that the state in its cupidity forces him to pay the highest possible price for agricultural laborers, and he must make it back out of the men, even if he must bribe a public official in order to do so. Of course, such a thing is unauthorized by law. It is only one of the many abuses to which the lease system must always be liable.¹

¹ In justice to the penitentiary officials it should be noted that the practice of hiring out convicts is forced upon them, and is not of their own choosing. Gov. Hogg explained the situation when he said: "The trouble seems to be that the state has more convicts than it is capable of keeping within the walls of the two penitentiaries, or of working upon farms she now operates." The board of penitentiary commissioners has uniformly opposed the continuance of the practice, but the legislature has not acted upon their advice. In their report for the two years ending September 30, 1902, the commissioners say that all are agreed "that a large majority of the abuses which have arisen in the prison management * * * * are not only attributable to, but are the direct and logical results of the custom of hiring convicts to be worked outside the penitentiary walls."

The secret of the continuance of the contract system is that during the last three years the wages paid to the state for the labor of the convicts have yielded an average annual *net* revenue of \$133,720.90, and no legislature has dared to cut off this certain revenue, and at the same time lay out large sums in the enlargement of the penitentiaries, or in the purchase of additional state farms.

It should also be said that the management has done, and is doing all in its power to rid the system of the abuses and excesses to which the investigating committee called attention. It has long been a rule of the board of commissioners that convicts are not to be cursed or abused by sergeants and guards, that corporal punishment is not to be inflicted by them without written permission from a superior officer, and that convicts are not to be worked when known to be sick. In his last report, Supt. Searcy Baker says, "No convict has been shot unless in the act of escaping, and only when necessary to prevent his escape. A full investigation is made

What has just been said relates to the grosser inhumanities of the lease system. It goes without saying that the reformation of the convict is not to be thought of. Not one ray of moral or intellectual light ever pierces the thick darkness of the prisoner's life. He seldom sees a book or a paper and does not hear a sermon or a word of counsel for months together. Surrounded night and day by the most vicious comrades and associates, removed from all the softening influences of civil society, whipped and cursed and abused by brutal slave-drivers, the convict serves out his time and returns to society a far more dangerous man than when he fell into the clutches of the state. And who would not be? Who among us is of such moral strength and fibre that he would be able to resist such influences? If now and then a man discharged from these camps returns to society to lead an honorable life, the state may congratulate itself on its good fortune, not on the wisdom with which it deals with the criminal. "From such camps as our state and county convict farms," says Judge Henderson, "are recruited the criminal ranks; from such schools are turned loose upon society the assassins, cut-throats, rapists and murderers that infest the state."

Such, in brief, are the conditions in the penal institutions of Texas as now organized and operated. That there is urgent need of reform is patent to all. It is equally clear that much can be done by the abolition of the lease system and other abuses, and by the introduction of more direct reformatory measures in dealing with the convict. But it seems that the trouble is far more fundamental, and that society will make little real progress against the criminal class until it adopts a different attitude toward crime and the criminal. Our criminal codes and penal institutions are based on the false principle that it is the duty of the state to revenge itself upon the criminal offender, to retaliate for his wrongs, to measure out retribution. This theory is an inheritance from our earliest savage ancestors, and is the outgrowth of the brutal instinct in man to return evil for evil.

by the inspector, and in case of death a justice of the peace holds an inquest and reports the verdict to the proper authorities. In no instance where a convict has been killed has a grand jury found a bill of indictment against the employee who did the shooting." A recent rule of the board prohibits sergeants from accepting additional pay from contractors.

From this it will be seen that the abuses complained of by the investigating committee are the results of the contract system itself, and not of carelessness on the part of the board. The abuses will continue so long as the contract system is retained.

Until within the last quarter of a century, the efforts of reformers seem to have been directed against the excesses and brutalities of the old system instead of against the system itself. The trouble is with the codes to a great degree. The harshness is the inevitable outgrowth of the theory of retribution and deterrence. Society is still trying to mete out so-called justice, that is, to repay the criminal in his own coin. We still act on the principle that the criminal has injured society and he must be injured in return. We strike a rough estimate of the value of each crime and give the criminal two years, or ten, according as he has chanced to commit this crime or that. At the end of his term he is turned loose on society again regardless of his mental or moral condition. As well might society cage a man-eating tiger for a year, then to be turned loose more bloodthirsty than before.

Now, these truths are held to be self-evident. Civil society has but one avowed enemy, the criminal. Society must protect itself against its enemy at whatever cost to him, provided always that no greater force is used against him than is necessary to accomplish the desired end. To accomplish that end society's enemy must either be reconciled or disarmed and, as a corollary, disarmed during the process of reconciliation. Whenever society discovers an enemy, it should make a serious effort to reconcile him, and, failing in that, should put him where he can be made to earn his keep but never again be given an opportunity to injure others. It follows, therefore, that every state should have at least two penitentiaries, one for those criminals for whom hope of reconciliation is entertained, the other for the incorrigibles; and that every criminal should be sent to the penitentiary, not for one year nor for ten, but for an indefinite period, to remain until in the judgment of the constituted authorities he is fit to be restored to the bosom of society. If he proves to be utterly depraved and irreconcilable, then under no circumstances should he be released to return to his evil practices and to prey upon the community.

The indefinite or indeterminate sentence should be applied to all criminals. Its aim is not retribution nor deterrence, though both these ends may be accomplished incidentally by its application. Its sole purpose is to protect society against the criminal. This it accomplishes by locking him up until he is no longer dangerous to society, or if he refuses to be reformed, by keeping him in perpetual

confinement. It regards him as a defective, a ward of the state, and treats him as such. His case is closely analogous to that of the insane man. The madman is tried and sentenced to the asylum for the insane, not for a definite period, nor to punish him for any previous acts of violence he may have committed, but the safety of society demands that he be confined until cured, even if it requires the remainder of his natural life. His previous acts have nothing to do with the length of his confinement. Their only importance is the evidence they furnish as to his mental unsoundness. And just so it should be with the criminal. The one is a mental defective, the other a moral defective. Both alike are dangerous to the state and should be committed to the care of experienced specialists and kept there until cured.

The indefinite sentence will also correct the evils growing out short sentences. Society itself is very largely responsible for the presence of a criminal class in its midst. In an address before the National Prison Congress in 1898, Charles Dudley Warner said, "The state is to a certain extent responsible for this class, for it has trained most of them, from youth up, through successive detentions in lock-ups, city prisons, county jails, and in state prisons and penitentiaries on relatively short sentences, under influences which tend to educate them as criminals and confirm them in a bad life. That is to say, if a man once violates the law and is caught, he is put into a machine from which it is very difficult for him to escape without further deterioration. It is not simply that the state puts a brand on him in the eyes of the community, but it takes away his self-respect without giving him an opportunity to recover it." It is not uncommon to find young men of twenty or twenty-five years of age who have served several terms in some penal institution. Thus during the year ending September 30, 1888, there were 606 convicts sent to the Massachusetts Reformatory at Concord. Their average age was twenty-two years. Of that number, only 282, or less than 50 per cent, had never before been confined in a penal institution; 138 had served one previous term; 96, two terms; 33, three terms; 22, four terms; 11, six terms; and 11, ten terms or more. Such a system is absurd. No better way could be devised for training up criminals to prey on society. Each time the criminal returns to society with less of manhood and moral stamina than before. Common reason would dictate a different policy. If the criminal has

committed an act, which, however trivial, proves him to be too dangerous to remain at large, then he should be confined once for all, or until he shows good signs of such a change of character that he is no longer dangerous to society.

Another great benefit to be derived from the indeterminate sentence is the change in the attitude of the agents of the state toward the criminal, and in the attitude of the criminal toward the agents of the state and toward the measures used to accomplish his reform. At present the prison warden is charged with the duty of guarding the prisoner and keeping him securely until the time comes for his release. The warden is then relieved of all responsibility for his future conduct. Under the indeterminate sentence the warden and his assistants are charged with the responsibility of preparing the criminal for future citizenship. In the one case the warden is a guard; in the other, he becomes a teacher, a sort of philanthropic missionary charged with the responsible duty of preaching to social outcasts the gospel of honest living and civic virtue. The one requires the qualities of a Roman soldier; the other is a task for the trained specialist only, and demands the highest qualities of head and heart.

But the change in the attitude of the criminal is even greater. Under the definite sentence, he does just as little as possible except to brood over his wrongs and count the days until his term shall end. He regards the warden and guards as his special enemies and sets his will squarely against theirs and resists all efforts to effect his reformation. But under the indefinite sentence his destiny is placed largely in his own hands, and he soon sees that there is something for him to do, that he must win his own release, and he comes to regard his instructors as his best friends. Dr. F. H. Wines, for twenty-five years secretary of the Illinois Board of Charities and assistant director of the last census, declares that nothing is so potent to convert the prisoner's will, to win him over, to make him willing to receive the instruments of reform, and even to apply them to his own case, as the indeterminate sentence. "Hope," says he, "springs eternal in the convict's breast, but it ordinarily assumes the form of a vague expectation of a pardon, or of a favorable chance to escape. If he can be convinced that these anticipations are fallacious, but that he will be released as soon as it shall become apparent to the officers who have him in charge that society has no

longer anything to fear from him, and that he can convince them of this fact by his own conduct in prison, from that moment his will is gained and the rest is comparatively easy. As Maconochie expressed it, 'When a man keeps the key to his own prison, he is soon persuaded to fit it to the lock.'

"But," says one, "such a system is unjust. A man who has committed some heinous crime may secure his release after a few months of confinement, while another might be held many years or even for life for some petty offence." It is true such a thing might happen. But why should the one still be confined when he has given satisfactory evidence that he is now ready to lead the life of an honorable citizen? Or why should the other be released upon society when he has shown no disposition to lead a different life from that he led before his incarceration? If he was dangerous then, he is dangerous now, and should be restrained. More than thirty years ago, Superintendent Brockway, of the Elmira Reformatory, announced the great principle that lies at the basis of all true prison reform: "Persons whose moral depravity makes them a public offence should be committed to properly organized institutions until they are cured." This principle was adopted as part of the creed of the National Prison Association at its first session in 1870 and has hardly been seriously questioned by a scientific penologist from that day to this. The character of the crime committed is a matter of absolute indifference. No person dangerous to society should be allowed to run at large, and no person should be restrained when he has given evidence that he is ready to lead an honorable life.

There is another objection which is usually raised and which constitutes the stronghold of the opposition to the system of rational imprisonment. "How can the indeterminate sentence be made determinate? Where is the wisdom, the knowledge of hearts, the power to read character, the insight into motive, sincerity, strength of will, the eye to pierce all disguises, to detect hypocrisy, to recognize manliness, to distinguish conscience and honest purpose from pretence and cunning? I confess that the decision when to terminate the sentence in each individual case, is one of the most difficult which can be imposed on the human mind. To make it always without error is not in the power of any man or body of men. The reformatory method with criminals will never be administered with-

out errors, and such errors must work hardships. . . . The force of the objection must be admitted without reserve. It is a fearful necessity that is thrown upon the state to exercise such a prerogative through fallible agents."

"But," says Mr. Charlton Lewis, an eminent penologist of New York City, "it cannot be too emphatically asserted that the objection is not to the indeterminate sentence as a method, but to every method of restraining criminals. If imprisonment must be practiced, somebody must be vested with the power to decide who shall be imprisoned and how long. Assuming the necessity of the restraint, human minds capable of error must assign and administer it. Observe then that the objection in question applies with a thousand-fold more force to the traditional system of retribution than to the scientific system of reformation. If students of humanity trained in the work of searching the character, stimulating the better motives, and watching for the growth of responsibility and conscience, who are in daily, hourly intercourse with their wards for the sole purpose of preparing them to be free, may still be deceived in them, what shall we say of the judge, who sees the prisoner for an hour or a day at his bar, and whose knowledge of him is carefully limited to the single act of which he is accused? The more familiar we are with the practical work of penal jurisprudence, the more irresistibly shall we conclude that, while the difficulty of fair and effective administration will always be felt under any system of law, that difficulty amounts to utter impossibility under the current system of retribution, and is infinitely diminished under the reformatory plan. Thus the objection so often urged against the indeterminate sentence and its corollaries, becomes, when candidly examined, an unanswerable plea for its adoption."

Such, then, is the indeterminate sentence in theory; but we are naturally skeptical and demand proof. How has it worked in actual practice? To this question only a partial answer can be given, for the absolutely indeterminate sentence as advocated here has never yet been tried. Legislators are usually ready to admit the justice of the cause, but, such is the force of traditional prejudice and immemorial custom that they have applied the principle in a very lame and halting way. Yet it has received considerable recognition. The pardoning power in the hands of the executive and the shortening of the term for good behavior are in a very crude way applica-

tions of the principle, and show that the need has long been felt. In a modified form, the indeterminate sentence has been incorporated in the laws of several European countries and of a number of the states of the Union, including Massachusetts, New York, Ohio and others. The members of the recent Legislative Investigating Committee of Texas were not scientific penologists and prison reformers, and probably have never had their attention called to the merits of the indeterminate sentence. And yet it forced itself upon them in a modified form, and in their report they give it the following endorsement: "All convicts sentenced for a longer term than twenty years, except for rape, ought to be pardoned at the end of that time on the certificate of the superintendent of the penitentiaries that they have a good record and show evidences of such reform that would make them good citizens." It is no coincidence that of all the experiments looking toward the introduction of the indeterminate sentence, that of the New York State Reformatory at Elmira has been the most extensive and the most eminently successful.

CHARLES S. POTTS.

Agricultural and Mechanical College of Texas.